IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7234 OF 2006

Ranjit Dattatraya Shingare ...Petitioner

Versus

Kurduwadi Nagar Parishad and others ...Respondents

Mr. M.S. Topkar for the petitioner.
Mr. K.S. Bapat for respondent No.1.

CORAM: **H.S. BEDI, C.J.,** &
V.M. KANADE, J.

DATE: **NOVEMBER 06, 2006**.

P.C.

We have heard the learned counsel for the parties.

2. The petitioner's father, who was a project affected person as defined under the Maharashtra Project Affected Persons Rehabilitation Act, 1986, was working as a Health Inspector with Respondent No.1 and retired on 31st January, 2001. By a Government Resolution dated 13th September, 2000, the Government directed that project affected persons should be given preference for upto 5% posts in Grades C and D of establishments such as Government service, statutory corporation, Zilla Parishad, etc. and for that purpose a procedure was

also prescribed. On 5th October, 2001, respondent No.3 accorded permission under Section 76 (2) of the Municipal Councils Act to fill up one post of HealthInspector from the category of project affected persons. Consequently, respondent No.1 requested the District Employment and Self Employment Guidance Bureau and District Rehabilitation Officer, to communicate names of qualified and project affected person. The petitioner's name was accordingly communicated and was put at serial No.4 of the list.

3. It is the case of the petitioner that after the interview and proper procedure, the petitioner was selected for the post of Health Inspector on 30th October, 2001. The petitioner's appointment was challenged by one of the candidates by filing a Writ Petition in this Court being Writ Petition No. 514 of 2001, but no relief was granted to the petitioner therein. It appears however that respondent No.2 by his order dated 6th July, 2002 stayed the petitioner's appointment, without affording an opportunity of a hearing to him. The petitioner challenged the said order before the Labour Court, but secured no relief. The petitioner carried the matter further to the Industrial Court by way of a Revision Application which was also dismissed. The petitioner then filed Writ Petition No. 8687 of 2004 in this Court impugning the two

orders. This Court in its order dated 30th November, 2004 directed as under:

> "Acordingly, we direct the Chief Officer to hold an appropriate enquiry as to whether the appointment of the petitioner was irregular and illegal. It will be open to the petitioner to make available himself for the said enquiry. Enquiry will consider whether the post was for project affected person and that his name was rightly recommended and selected by the Selection Committee. The Chief Officer will hold enquiry and come to the conclusion within two months from today. In the event, the Chief Officer find that the appointment was irregular and illegal, the post will be filled in accordance with law and rules and after considering the claim of all the persons who come in the zone of consideration. Mr. S.G. Kudle appearing for the Respondent No.6 submitted that the Respondent No.6 also be permitted to apply for the said post and appears before the Selection Committee. That will be so if the Respondent no.6 comes within the zone of consideration.
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> 4. We make it clear that until the first determination i.e. Enquiry in respect of the appointment of the petitioner as irregular and illegal one is done and thereafter until second selection for the said post is made by the following proper procedure, till then officiating posting of the Petitioner as Health Inspector to continue. The second exercise will be

done within eight weeks after coming to the conclusion in the first determination”

4. Pursuant to this direction, the respondents conducted an enquiry and thereafter passed the impugned order at Exhibit-K holding that the appointment of the petitioner had been made without following the procedure prescribed by the Government and that the petitioner was not even qualified to hold the post. It is this order which has been challenged in this writ petition.

5. At the very outset, the learned counsel for the petitioner argued that the directions of this Court in the earlier writ petition had been ignored by the respondents and that the enquiry report had not been supplied to the petitioner prior to the order at Exhibit-K, with the result that the petitioner was unaware as to what had prompted the said order. The learned counsel for the respondent has, however, pointed out that it was clear from the enquiry report at Exhibit-L that the petitioner's appointment was completely unauthorised and that the petitioner did not meet the requirements for appointment to the said post.

6. We are not called upon to decide these questions at this stage, as (in view of the directions given by this Court) the respondents

were to make an enquiry as to whether the appointment of the petitioner was wrong. We find that the impugned order at Exhibit-K is completely non-speaking and that the report at Exhibit-L had been given to the petitioner long after the order at Exhibit-K had already been made. The petitioner, therefore, had no opportunity of meeting with the points found against him in the enquiry. In this view of the matter, we quash and set aside the order Exhibit-K dated 9th May, 2005 passed by respondent No.1 with liberty to the respondents to comply with the directions issued in the earlier writ petition, and take a fresh decision in the matter as expeditiously as possible. This writ petition is accordingly disposed of.

CHIEF JUSTICE

V.M. KANADE, J.